

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to food and consumer safety and food establishment and food processing plant inspections and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 30, “Food and Consumer Safety,” and Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 137F.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2 and 2019 Iowa Acts, Senate File 265.

Purpose and Summary

The proposed amendments correct the date in the reference to the Food and Drug Administration Food Code with Supplement in rule 481—30.2(10A,137C,137D,137F). The 2013 Food Code was adopted by the Department effective January 1, 2018 (rule 481—31.1(137F), **ARC 3188C**, IAB 7/5/17).

The proposed amendments also reinstate several provisions related to double licenses in rule 481—30.7(137F) that were removed in 2018, which resulted in unintended consequences to licensees.

The proposed amendments add a confidentiality provision related to complainants who file a complaint with the Department’s Food and Consumer Safety Bureau.

The proposed amendments implement changes made to Iowa Code chapter 137F resulting from the enactment of 2019 Iowa Acts, Senate File 265. The legislation requires the Department to adopt rules for the sale at a farmers market of culinary mushrooms commonly referred to as a variety of wild oyster.

Finally, the proposed amendments adopt a definition of “wild-harvested mushroom” and amend the requirements related to the wild-harvested mushroom identification course to obtain certification as a wild-harvested mushroom identification expert.

Prior to submission of this Notice, the Department distributed for comment a draft of these proposed amendments to industry associations, local contracting health departments and food safety educators.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 3, 2019. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 481—30.2(10A,137C,137D,137F), introductory paragraph, as follows:

481—30.2(10A,137C,137D,137F) Definitions. If both the ~~2009~~ 2013 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,137D,137F) define a term, the definition in rule 481—30.2(10A,137C,137D,137F) shall apply.

ITEM 2. Adopt the following new definition of “Wild-harvested mushroom” in rule **481—30.2(10A,137C,137D,137F):**

“*Wild-harvested mushroom*” means a fresh mushroom that has been picked in the wild and has not been processed (e.g., dried or frozen). “Wild-harvested mushroom” does not include cultivated mushrooms or mushrooms that have been packaged in an approved food processing plant.

ITEM 3. Amend rule 481—30.7(137F) as follows:

481—30.7(137F) Double licenses.

30.7(1) Any establishment that holds a food service establishment license and has gross sales over \$20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license. The license holder shall keep a record of these food sales and make it available to the department upon request.

30.7(2) Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

30.7(3) A food establishment that holds both a food service establishment license and a retail food establishment license shall pay a license fee based on the annual gross sales for the dominant form of business plus \$150.

EXAMPLE: A food establishment holds a food service establishment license and a retail food establishment license. It has annual gross sales of more than \$750,000 for its retail food establishment and \$120,000 for its food service establishment. The food establishment pays a license fee of \$400 for its retail food establishment license (paragraph 30.4(1)“c”) and \$150 for its food service establishment license (rule 481—30.7(137F)).

30.7(4) The dominant form of business shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and of a food processing plant. The dominant form of business shall be deemed to be the business with higher annual gross sales. Food establishments that also process low-acid food in hermetically sealed containers or process acidified foods are required to have a food processing plant license in addition to the food establishment license. Regardless of the type of license, food processing plants shall be inspected pursuant to food processing inspection standards and food establishments shall be inspected pursuant to the Food Code.

This rule is intended to implement Iowa Code sections 10A.104 and 137F.6.

ITEM 4. Amend subrule 30.9(2) as follows:

30.9(2) *Confidential records.* The following are examples of confidential records:

- a. Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;
 - b. Health information related to foodborne illness complaints and outbreaks; ~~and~~
 - c. The name or any identifying information of a person who files a complaint with the department;
- ~~and~~
- ~~e.~~ d. Other state or federal agencies’ records.

For records of other federal or state agencies, the department shall refer the requester of such information to the appropriate agency.

ITEM 5. Amend subrule 31.1(4) as follows:

31.1(4) *Morel mushrooms and oyster mushrooms (*Pleurotus ostreatus*, *Pleurotus populinus*, or *Pleurotus pulmonarius*).* Section 3-201.16, paragraph (A), is amended by adding the following:

“A food establishment or farmers market time/temperature control for safety food licensee may serve or sell morel mushrooms or oyster mushrooms (a variety classified as *Pleurotus ostreatus*, *Pleurotus populinus*, or *Pleurotus pulmonarius*) if procured from an individual who has completed a ~~morel~~ wild-harvested mushroom identification expert course. Every morel mushroom or oyster mushroom shall be identified and found to be safe by a certified ~~morel~~ wild-harvested mushroom identification expert whose competence has been verified and approved by the department through the expert’s successful completion of a ~~morel~~ wild-harvested mushroom identification expert course provided by either an accredited college or university or a mycological society. The course may address identification of morel mushrooms, oyster mushrooms, or both. The certified ~~morel~~ wild-harvested mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom or an oyster mushroom. A ~~morel~~ wild-harvested mushroom identification expert course shall be at least ~~three~~ two hours in length and include a visual identification exercise for each wild-harvested mushroom species that the individual will be certified to identify at the completion of the course. The individual’s certification of successful completion of the course must clearly indicate whether the certified wild-harvested mushroom identification expert is certified to identify morel mushrooms, oyster mushrooms, or both.

~~To~~ To maintain status as a ~~morel~~ wild-harvested mushroom identification expert, the individual shall have successfully completed a ~~morel~~ wild-harvested mushroom identification expert course described above within the past three years. A person who wishes to offer a ~~morel~~ wild-harvested mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market time/temperature control for safety food licensees offering morel mushrooms or oyster mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms or oyster mushrooms were obtained:

“1. The name, address, and telephone number of the ~~morel~~ wild-harvested mushroom identification expert;

“2. A copy of the ~~morel~~ wild-harvested mushroom identification expert’s certificate of successful completion of the course, containing the date of completion; and

“3. The quantity of morel mushrooms or oyster mushrooms purchased and the date(s) purchased.

“Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that ~~wild~~ wild-harvested mushrooms should be thoroughly cooked and may cause allergic reactions or other effects.”